

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-590V

Filed: August 30, 2013

KELLY SCHULTZ and PETER SCHULTZ, *
parents of, L.S., a minor, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Ronald Homer (Christina Ciampolillo), Conway, Homer & Chin-Caplan, Boston, MA, for
Petitioners

Justine Elizabeth Daigneault, US Dep't of Justice, Washington, DC, for Respondent

ORDER DENYING RESPONDENT'S MOTION TO DISMISS IN LIGHT OF JOINDER OF PETITIONERS IN CASE NO. 12-234 AND DISMISSING THIS CASE

This matter is before the special master on Respondent's Motion to Dismiss.¹ That motion seeks to dismiss the claim of Petitioners, as parents of L.S., on the grounds that because the child was *in utero* at the time of the alleged vaccine-related injuries, this is not a compensable

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, § 205, 44 U.S.C. § 3501 (2006). The decisions of the special master will be made available to the public with the exception of those portions that contain trade secret or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available. If the special master, upon review of a timely filed motion to redact, agrees that the identified material fits within the categories listed above, the special master shall redact such material from the decision made available to the public. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

claim. The subject motion was filed in conjunction with a Motion to Join Additional Party filed by Petitioner in Case No. 12-234V. The petitioner in Case No. 12-234V is the mother of L.S. and seeks compensation for alleged vaccine-related injuries she suffered as a result of an influenza vaccine administered to her on September 15, 2009. By order entered in that case today, attached as Appendix A and incorporated herein, Petitioner's motion to join in that case has been GRANTED. The rationale for granting that motion is applicable to the pending motion to dismiss. Accordingly, the following is hereby ORDERED.

- (1) For the reasons stated in the order entered in Case No. 12-234V, incorporated herein and attached as Appendix A, Respondent's Motion to Dismiss is hereby DENIED;
- (2) By the order entered in Case No. 12-234V, Petitioners in this case are now joined as parties in Case No. 12-234V, in their capacities as representatives of their child, L.S., and their claim shall be adjudicated in that case; and
- (3) As a result of the joinder of Petitioners in Case No. 12-234V, there remains no claim to be adjudicated in this case so that this case is hereby DISMISSED.

CONCLUSION

Accordingly, this action is hereby DISMISSED. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

/s/ Daria J. Zane
Daria J. Zane
Special Master